

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY CLIFTON WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

October 18, 2007

No. 271791

Oakland Circuit Court

LC No. 2005-202981-FC

Before: Kelly, P.J., and Meter and Gleicher, JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a), and first-degree felony murder, MCL 750.316(1)(b), arising from the stabbing death of Alonso Ford, the victim. Prior to trial, defendant pleaded guilty of several lesser charges, specifically unlawfully driving away an automobile (UDAA), MCL 750.413, larceny of a firearm, MCL 750.357b, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent terms of life imprisonment without parole for the murder convictions, and two to five years' imprisonment for the UDAA and larceny of a firearm convictions, to be served consecutively to a two-year term of imprisonment for the felony-firearm convictions. Defendant appeals as of right. We affirm a first-degree murder conviction for defendant and the trial court's imposition of a life term of imprisonment without parole, but we remand for modification of the judgment of sentence to vacate his plea-based UDAA conviction, the predicate felony underlying felony murder, and to reflect one murder conviction pursuant to two alternate theories.

On May 11, 2005, a friend discovered the victim's body in his Southfield apartment. An autopsy revealed 41 stab wounds, possibly produced by two different knives. Police investigators found defendant's bloody fingerprints and his palm print inside the victim's apartment, and identified a deoxyribonucleic acid (DNA) profile matching defendant's under the victim's fingernails. The DNA profile on a pair of defendant's bloodstained jeans also matched the victim's DNA profile.

At the time of the victim's death, defendant and his girlfriend, Monique Wallace, temporarily were residing in the victim's apartment, pending a return trip back home to Indiana. Friends of the victim told the police that shortly after the victim's death, defendant and Wallace returned to Indiana. The victim's cell phone records indicated that after his death, his phone placed calls from Indiana.

Southfield police detectives arrested defendant in Indiana. During a custodial interview, defendant confessed to killing the victim. He told the detectives that he and the victim argued, and then started to wrestle. According to defendant, while they wrestled he grabbed a kitchen knife and swung it blindly at the victim, ultimately stabbing him between one and ten times. Defendant admitted that he and Wallace packed up several of the victim's belongings and drove away in the victim's car. During a second interrogation the next day, defendant added that when he finished stabbing the victim with "the small knife," as the victim lay motionless on the living room floor, he went into the kitchen, grabbed a larger knife, and stabbed the victim again.

Defendant first contends that the trial court should have suppressed his statements to the police because he made repeated requests for counsel during the interrogations, which the police ignored. Defendant also argues that his statements to the police were involuntary because he felt nervous and scared during the interview, he had never been arrested before, and he felt as though he had no choice but to sign the *Miranda*¹ notification form.

The basic rights afforded to an accused in police custody were described by the United States Supreme Court in *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). The accused's rights include the right to counsel during custodial interrogation. When an accused invokes this right, further interrogation must cease until counsel is made available, unless the accused initiates further communications or conversations with the police. *People v Paintman*, 412 Mich 518, 524-525; 315 NW2d 418 (1982), quoting *Edwards v Arizona*, 451 US 477, 484; 101 S Ct 1880; 68 L Ed 2d 378 (1981). To determine whether a suspect has volunteered a legally admissible statement, a court must review the totality of the surrounding circumstances to ascertain if the statement is "the product of an essentially free and unconstrained choice by its maker." *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988), quoting *Culombe v Connecticut*, 367 US 568, 602; 81 S Ct 1860; 6 L Ed 2d 1037 (1961).

The trial court held an evidentiary hearing pursuant to *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965). After the hearing, the trial court denied defendant's motion to suppress. In reviewing a trial court's ultimate decision on a motion to suppress, we conduct de novo review of the entire record. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). We will not disturb the trial court's factual findings at a *Walker* hearing unless they qualify as clearly erroneous. *Id.* A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that the trial court made a mistake. *Id.* at 564.

Defendant testified at the *Walker* hearing that during both interrogations, the detectives continued to question him despite his repeated requests for an attorney. Three Southfield detectives testified that defendant was advised of his right to counsel before the interrogations, and that before each interview he waived his right to counsel in writing. The detectives also recounted that before each interrogation defendant was advised of all his *Miranda* rights, that he read and understood a form detailing each specific *Miranda* right, and that after reading the form, defendant initialed it next to each constitutional right. At the hearing, defendant did not dispute having initialed and signed forms advising him of his constitutional rights, but maintained that he

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

had signed these documents against his will and without comprehending the nature of his rights. The three detectives agreed that defendant never requested an attorney. Additional testimony and documentary evidence provided at the *Walker* hearing revealed that defendant hand wrote answers to several pages of questions presented to him by a detective, including, “Did the detectives treat you fairly?” Defendant answered, “Yes,” and also responded affirmatively to the inquiry, “Did the detectives advise you of your rights?”

The trial court found the three detectives “extremely credible,” and opined that “defendant was not a credible witness.” The trial court also found that on both interview dates, defendant initialed the Miranda forms and indicated in writing that he understood his rights. The trial court explained that “his approach today, which is that he basically lied when he filled out the form, I find to be incredible.” On these grounds, the trial court determined that defendant never requested the assistance of counsel. Our review of the *Walker* hearing record, giving appropriate deference to the trial court’s credibility determinations, does not leave us with the definite and firm conviction that the trial court made a mistake. The trial court’s finding cannot be deemed clear error. *Akins, supra* at 564; *People v Shipley*, 256 Mich App 367, 373; 662 NW2d 856 (2003).

Defendant further claims that his statements to the police were inadmissible because he made them involuntarily. A statement of an accused made during a custodial interrogation is inadmissible unless the prosecution establishes by a preponderance of the evidence that the accused voluntarily, knowingly, and intelligently waived his *Miranda* rights. *People v Daoud*, 462 Mich 621, 633-634; 614 NW2d 152 (2000). An inquiry regarding voluntariness “is determined by examining the conduct of the police,” with consideration given to whether the police made promises of leniency to induce the statement, as well as the following relevant factors:

(T)he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; . . . whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. *Shipley, supra* at 373-374.

At the *Walker* hearing, defendant testified that he felt nervous and scared during the interrogations, and that he only answered the detectives’ questions because he believed he had no other choice. Defendant admitted that he had a high school education, could read and write, and that the detectives made no threats or promises of leniency. Further, the detectives’ testimonies at the *Walker* hearing agreed that defendant did not appear ill, intoxicated, or drugged during the interrogations, was not deprived of food or sleep, appeared to understand his rights despite his inexperience with the police, and answered all of their questions appropriately. Under the totality of the circumstances in this case, we find that the prosecution proved, by at least a preponderance of the evidence, that defendant voluntarily waived his *Miranda* rights when he made his incriminating statements to the detectives. *Daoud, supra* at 633-634.

Defendant next argues that the prosecution presented insufficient evidence to prove that he premeditated or deliberated the victim's murder. We review sufficiency of the evidence claims de novo to determine whether the evidence, viewed in the light most favorable to the prosecution, warrants a rational trier of fact in finding that all the elements of the charged crime have been proved beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

To establish first-degree murder under MCL 750.316(1)(a), the prosecution must prove "that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *People v Saunders*, 189 Mich App 494, 496; 473 NW2d 755 (1991). Premeditation and deliberation involve an "interval between the initial thought and ultimate action . . . [that] afford[s] a reasonable person time to take a 'second look.'" *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003). Factors relevant in establishing premeditation and deliberation include evidence of 1) the parties' prior relationship; 2) the defendant's actions before the killing; 3) the circumstances of the killing, including the manner of the victim's death; and 4) the defendant's actions after the killing. *People v Bowman*, 254 Mich App 142, 152; 656 NW2d 835 (2002); *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). Premeditation and deliberation can be inferred from the circumstances surrounding the victim's death. *Saunders*, *supra* at 496. Circumstantial evidence and the reasonable inferences arising therefrom can constitute sufficient proof of the elements of a crime, including premeditation and deliberation. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001). Furthermore, minimal circumstantial evidence suffices to prove a defendant's state of mind. *People v Fennell*, 260 Mich App 261, 270-271; 677 NW2d 66 (2004).

A witness testified that the victim agreed to lodge defendant and Wallace for a brief time in his apartment, until their planned return to Indiana. Defendant told the detectives that he and Wallace did not have enough money to return to Indiana, and that he and the victim argued about when defendant and Wallace would leave. The argument led to a "wrestling match," during which defendant reached into a drawer, grabbed a knife, swung it at the victim and eventually stabbed him multiple times. Defendant further confessed that while the victim lay motionless on the living room floor, defendant retrieved a larger knife from the kitchen and stabbed the victim in the back.

The medical examiner identified at least 41 stab wounds in the victim's head, neck, back, abdomen and hand. The examiner believed that the wounds were inflicted with more than one knife, and that the wound to the victim's hand was defensive. Trace evidence in the victim's bathroom, together with defendant's statements to the police, established that immediately after the stabbing, defendant attempted to wash off blood. Defendant admitted that he and Wallace stole the victim's Xbox, a pair of shoes, a gun and his car. They drove to the nearby residence of a relative, where defendant discarded his bloody clothing, showered, and donned clean clothes, before driving to Indiana. In Indiana, defendant and Wallace made calls using the victim's cell phone. When apprehended, defendant fabricated a claim that masked intruders had stormed the victim's apartment.

We conclude that this abundant evidence, some of which defendant himself supplied, supported the jury's finding beyond any reasonable doubt that defendant premeditated and deliberated the victim's murder. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998) (citing as evidence of premeditation and deliberation the defendant's employment of use of

different weapons and methods in killing the victim, and the defendant's subsequent stealing of items from the victim's house).

Defendant alternatively argues that the prosecution presented insufficient evidence to overcome his theory of self-defense. "Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt." *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005) (internal quotation omitted). The killing of another person in self-defense qualifies as justifiable homicide only if the defendant honestly and reasonably believes that he faces an imminent danger of death or serious bodily harm "and that it is necessary to exercise deadly force to prevent such harm to himself." *People v Riddle*, 467 Mich 116, 127; 649 NW2d 30 (2002). In deciding whether the defendant reasonably feared for his safety, the jury must consider the circumstances as they appeared to the defendant at the time. *Riddle, supra* at 127; *People v Perez*, 66 Mich App 685, 692; 239 NW2d 432 (1976). Defendant claims that he feared for his life while he and the victim were wrestling because he knew that the victim kept weapons in the apartment, owned a shoulder holster and bulletproof vest, and sold drugs. The record contains no evidence, however, that the victim had a weapon of any kind while he and defendant were wrestling, or that the victim even attempted to grab a weapon before or during the stabbing. Because no evidence tends to substantiate that defendant reasonably feared for his life, we conclude that the jury rationally could have rejected his self-defense claim. *Riddle, supra* at 127.

Moreover, self-defense normally requires that the defendant try to avoid the use of deadly force if he can safely and reasonably do so, including through the use of nondeadly force or by retreat. *Riddle, supra* at 119. The law will condone a killing only when it constitutes the sole available means of escape from death or serious bodily harm. *People v Godsey*, 54 Mich App 316, 318; 220 NW2d 801 (1974). "A defendant is not entitled to use any more force than is necessary to defend himself." *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). Our review of the record likewise reveals no evidence that defendant attempted to retreat or use nondeadly force to escape the alleged threat against his life. To the contrary, defendant admitted that he stabbed the victim even after he was motionless on the floor.

Defendant finally argues, and the prosecution concurs, that his convictions of first-degree premeditated murder and felony murder arising from the death of a single victim, together with his conviction for UDAA, the predicate felony underlying his felony murder conviction, violate constitutional protections against double jeopardy. We previously have held that a defendant's convictions of and sentences for both first-degree premeditated murder and felony murder arising from the death of a single victim violates double jeopardy, as do "convictions of and sentences for both felony murder and the predicate offense." *People v Bigelow*, 229 Mich App 218, 220-222; 581 NW2d 744 (1998). In *People v Williams*, 475 Mich 101, 103; 715 NW2d 24 (2006), the Michigan Supreme Court recently reaffirmed this Court's double jeopardy analysis in *Bigelow*. Consequently, defendant's instant convictions of and sentences for both first-degree premeditated murder and first-degree felony murder arising from the victim's death, together with his conviction of and sentence for UDAA, the predicate felony underlying the felony murder conviction, violate double jeopardy principles. To avoid double jeopardy implications, defendant must "receive[] one conviction of first-degree murder, supported by two theories, and the conviction of the predicate felony [UDAA] underlying the felony murder [must be] vacated." *Id.*

We affirm defendant's first-degree murder conviction and the trial court's imposition of a mandatory term of life imprisonment without parole, but we remand for vacation of the plea-based UDAA conviction and amendment of his judgment of sentence in accordance with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher